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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Masumi Sakai

Attorney Docket No.: SMDZP106

Application No.: 09/779,125

Examiner: A.C. Lavarias

Filed: February 7, 2001

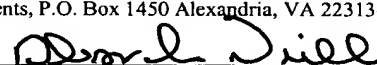
Group: 2872

Title: FURNACE-TYPE ATOMIC ABSORPTION
SPECTROPHOTOMETER

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first-class mail on April 26, 2005 in an envelope addressed to the Commissioner for Patents, Mail Stop Appeal Brief-Patents, P.O. Box 1450 Alexandria, VA 22313-1450.

Signed: _____


Deborah Neill

**APPEAL BRIEF TRANSMITTAL
(37 CFR 192)**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


Sir:

This corrected brief is in response to the Notice of Non-Compliant Appeal Brief dated April 18, 2005. This brief is transmitted in triplicate. Applicant filed the original Appeal Brief on October 21, 2004, and paid the filing fee due at that time.

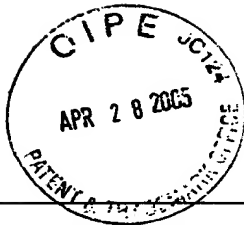
Applicant believes that no Extension of Time is required; however, if it is determined that such an extension is required, Applicant hereby petitions that such an extension be granted and authorizes the Commissioner to charge the required fees for an Extension of Time under 37 CFR 1.136 to Deposit Account No. 500388 (Order No. SMDZP106).

Charge any additional fees or credit any overpayment to Deposit Account No. 500388, (Order No. SMDZP106). Two copies of this transmittal are enclosed.

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP


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Deborah Neill

CORRECTED APPEAL BRIEF PURSUANT TO 37 CFR 41.37

Sir:

In response to Notification of Non-Compliant Appeal Brief dated April 18, 2005 in the above-referenced application, applicant-appellant submits the following corrected appeal brief.

This corrected brief is in furtherance of the Notice of Appeal mailed in the above-referenced application on September 29, 2004. The fees required under 37 C.F.R. 1.17(f) have already been paid at the time of filing said earlier submitted appeal brief.

This brief contains pursuant to 37 C.F.R. 41.37(c) the items under the following headings and in the order set forth below:

- I Real Party in Interest
- II Related Appeals and Interferences
- III Status of Claims
- IV Status of Amendments
- V Summary of Claimed Subject Matter
- VI Grounds of Rejection to Be Reviewed on Appeal
- VII Argument
- VIII Claims Appendix

I. Real Party in Interest

The real party in interest of this application and of this appeal is:

Shimadzu Corporation, which is a Japanese corporation doing business at 1 Nishinokyo-Kuwabaracho, Nakagyo-ku, Kyoto 604, Japan and is the assignee in entire rights to this application.

II. Related Appeals and Interferences

There are no other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The status of the claims as set in said final action dated August 13, 2004 was and is as follows:

allowed claims	---	none
claims objected to	---	none
cancelled and withdrawn claims	---	1-11, 14 and 17
claims rejected	---	12, 13, 15 and 16

The claims that are appealed are 12, 13, 15 and 16.

IV. Status of Amendments

No amendment was filed after said final action dated August 13, 2004.

V. Summary of Claimed Subject Matter

The subject matter claimed in independent claim 12 relates to a furnace-type atomic absorption spectrophotometer. A sample is heated inside a tube 3, and a heating control means (or a control unit) 20 digitally controls a heating current for heating the tube such that the monitored value of its temperature will approach a specified target temperature value (page 6, line 26 to page 8, line 2). Parameters that determine response characteristics of this heating control means 20 are set by a parameter setting means 23 that adjusts the parameters according to kinds of elements to be detected and thereby controls indicial response characteristics of the heating control means 20 in units of milliseconds when the tube 3 is heated by the heating control means 20 (page 3, line 26 to page 4, line 5). The heating control means 20 includes a calculator 21 for digitally obtaining a quantity of a specified operation of the heating control means 20 by a PID control calculation on difference between the monitored value and the target temperature value. The parameter setting means 23 serves to set at least one of parameters for the PID control calculation (page 5, line 27 to page 6, line 6).

VI. Ground of Rejection to Be Reviewed on Appeal

Claims 12, 13, 15 and 16 were rejected under 35 U.S.C. 103 over Egan in view of Pettit and Okumoto.

VII. Argument

The examiner admitted in said Final Office Action (1) that Egan and Pettit disclose controlling indicial response characteristics of a heating control means operating in units of seconds (in Paragraph 3) and (2) that the combined teachings of Egan and Pettit lack the parameter setting means setting parameters that determine response characteristics of the heating control means, the parameter setting adjusting the parameters according to kinds of elements to be detected (in Paragraph 6 on page 5 at lines 5-9). The examiner argued thereafter in said

Final Office Action that Okumoto disclosed different heating programs being stored and utilized by a spectrophotometer based on the element or combination of elements to be detected and analyzed (in Paragraph 6 on page 5 at lines 9-14). Regarding the response characteristics of the heating control means operating, the examiner stated as follows (verbatim): "Since, 1 second is equivalent to 1000 milliseconds, one skilled in the art would recognize that the heating control means may operate and display units of milliseconds, e.g. instead of operating and displaying 10 second, it would operate and display 10000 milliseconds."

One of the inventive elements in independent claim 12 is described as follows:

parameter setting means for setting parameters that determine response characteristics of said heating control means, said parameter setting means adjusting said parameters according to kinds of elements to be detected and thereby controlling indicial response characteristics of said heating control means in units of milliseconds when said tube is heated by said heating control means.

In other words, the examiner's rejection of this independent claim and all the other claims dependent therefrom should be reversed if none of the cited references describes or at least hints at such parameter setting means having the functions as described above. One of the functions to be noted that must be provided to this parameter setting means is that of "controlling indicial response characteristics of said heating control means in units of milliseconds when said tube is heated by said heating control means" but the examiner did not offer any argument in Paragraph 6 of said Final Office Action that any of the cited references described or even hinted at such function. The only statement by the examiner found in said Final Office Action related to the control of indicial response characteristic of a heat control means in whatever unit is the sentence in page 3 at lines 1-4 which is cited verbatim as follows:

Since, 1 second is equivalent to 1000 milliseconds, one skilled in the art would recognize that the heating control means may operate and display units of milliseconds, e.g. instead of operating and displaying 10 second, it would operate and display 10000 milliseconds.

Thus, the examiner's argument is essentially that a control in units of milliseconds is an obvious extension of a control in units of seconds (because 1 second equals 1000 milliseconds).


Applicant-appellant herein argues that a control in units of milliseconds neither is an obvious extension of a control in units of seconds so as to predicate a rejection under 35 U.S.C. 103 nor anticipates such a control in units of second so as to predicate a rejection under 35 U.S.C. 102 and requests that this be so held.

As explained above, this invention relates to a furnace-type atomic absorption spectrophotometer. This difference of three orders of magnitude (between a second and a millisecond) is particularly important within the framework of furnace-type atomic absorption spectrometer because it is the time of atomization that is particularly important. The atomization process usually ends in about one second (while the temperature program is usually set for 2-3 seconds). In view of this time of atomization, it is clear that a control in units of seconds is of little use. It is only because a control is in units of milliseconds according to this invention that an optimum temperature rise characteristic (response characteristic) can be obtained. It is not a mere matter of any three orders of magnitude.

Rejection of independent claim 12 as well as dependent claims 13, 15 and 16 dependent therefrom should be reversed.

Respectfully submitted,

Dated: April 26, 2005



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VIII. Claims Appendix

12. A furnace-type atomic absorption spectrophotometer comprising:
a tube for heating a sample therein;
monitoring means for monitoring temperature of said tube and outputting a monitored value indicative of the monitored temperature;
heating control means for digitally controlling heating current for heating said tube such that said monitored value will approach a specified target temperature value; and
parameter setting means for setting parameters that determine response characteristics of said heating control means, said parameter setting means adjusting said parameters according to kinds of elements to be detected and thereby controlling indicial response characteristics of said heating control means in units of milliseconds when said tube is heated by said heating control means;
wherein said heating control means includes a calculator for digitally obtaining a quantity of a specified operation of said heating control means by a PID control calculation on difference between said monitored value and said target temperature value and said parameter setting means serves to set at least one of parameters for said PID control calculation.
13. The spectrometer of claim 12 wherein said indicial response characteristics include characteristics at a time of raising temperature.
15. The spectrophotometer of claim 12 wherein said PID control is carried out with a proportional parameter, an integration parameter and a differential parameter.
16. The spectrophotometer of claim 12 wherein said monitoring means monitors values indicative of the temperature of said tube.

IX. Evidence Appendix

Not applicable and not presented.

X. Related Proceedings Appendix

Not applicable and not presented.